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State Compensation Insurance Fund

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State Fund appreciates the opportunity to provide the following comments regarding the proposed draft regulations in the DWC forum.

**Section 9767.12(a) - The MPN implementation notice notification(s) shall be written in English ~~and or~~ Spanish, whichever is more appropriate for the employee. The initial written MPN implementation notice to all covered employees notification shall at a minimum, include the following information:**

**Comment** – While the proposed recommendation appears to alleviate sending MPN notices in both English and Spanish to all covered employees, the DWC should define “appropriate for the employee.” Without some type of guidelines, disputes may arise contending that a notice was sent in the wrong language and injured employees may argue at the time of injury that they are not required to treat within the MPN. Workers’ Compensation Judges will be required to resolve these issues tying up valuable court time and increasing litigation/frictional costs.

**Recommendation** – Amend as follows: “English and/or Spanish, whichever is appropriate...”

**Section 9767.12(a)(3) - That existing work injuries may be covered under the new MPN;**

**Comment** – Requiring the above statement to be included in the initial MPN implementation notice to all covered employee could be confusing to covered employees with existing work injuries. When the MPN implementation is a result of a change of insurers, covered employees with existing injuries will still be covered by the prior insurer. The above language suggests that the injured employee could treat with a provider in the new MPN for their existing injury. This language is not applicable when the MPN implementation is a result of a new insurer.

**Recommendation:** Amend as follows:

That existing work injuries may be covered under the new MPN, unless the MPN implementation results from a change in insurers;

**Section 9767.12(d) In addition, separate from the initial MPN implementation notice, a complete written MPN employee notification with the following information about coverage under the MPN being implemented shall be provided to covered employees.... Before MPN coverage is implemented, the complete written MPN employee notification shall also be posted in both English and Spanish in a conspicuous location frequented by employees during the hours of the workday and in close proximity to the workers' compensation posting required under Section 9881. The complete written MPN employee notification shall include the following information:**

**Comment**–Currently, information required in the Written Notice to New Employee Notification/section 9880 [i.e., new employee pamphlet/brochure] is also required in Posting of Notice to EEs/section 9881 & 9881.1 [i.e., Posting Notice]. The proposed changes to Section

9767.12(d) implies that a NEW MPN ‘posting notice’ will be required in addition to the existing posting notice (9881.1), which will also be required to provide more information about the MPN as proposed by 9880(c)(14). Essentially, both postings will have similar information and be required to be posted in “close proximity” to each other. If the employer’s existing MPN information is on the posting notice (9881.1), having a new MPN posting “Before” the implementation may complicate and confuse the employees on where they are supposed to be treated during the transition period.

The legislative intent of having a medical provider network was to reduce medical costs to treat injured employees while providing higher quality medical care. Requiring employers to post yet another posting notice will increase administrative costs to create, distribute and maintain MPN posting notices; and very likely increase litigation costs over disputes on whether a covered employee is subject to the MPN because a posting notice was missing, not in “close proximity,” or not in Spanish, etc.

When the MPNs first came into existence, there were legal challenges made that the employer hadn’t posted the posting notice resulting in covered employees demanding exemption from the MPN and to treat with the physician of their choice. Disputes over such “failures” took valuable court time and increased associated litigation costs. Existing sections 9767.12, 9767.16, 9880 and 9881 address how to properly notifying covered/new employees about how to obtain medical care and if applicable within the employers/insurer’s MPN.

Regulation section 9881 states what information is required in the notice. Section 9881(c)(7) has been amended to include the rights to predesignate, and subsection 9881(c)(13) has been added to inform the covered employees with additional MPN information including an MPN Contact phone number and an MPN website URL. Since the information is going to be repeated in the existing new employee notification (9880) and the posting notice (9881), adding an additional MPN posting notice does not appear to improve the current system but create additional costs and potentially increase unnecessary litigation.

**Recommendation:** Delete the new MPN posting notice requirement as follows:

In addition, separate from the initial MPN implementation notice ...~~Before MPN coverage is implemented, the complete written MPN employee notification shall also be posted in both English and Spanish in a conspicuous location frequented by employees during the hours of the workday and in close proximity to the workers' compensation posting required under Section 9881.~~

**Section 9767.12(d)(1) - How to contact the person designated by the employer or insurer to be the MPN eContact for covered employees to answer questions about MPNs and to resolve MPN problems. The employer or insurer shall provide a toll-free telephone number if the MPN geographical service area includes more than one area code;**

**Comment -** Currently there are processes in place to resolve disputes for covered employees who treat within an MPN. It’s likely that an MPN Contact may not be able to resolve every MPN problem, thus the word resolve should be replaced as follows:

**Recommendation:** Amend as follows:

“How to contact the person designated by the employer or insurer to be the MPN eContact for covered employees to answer questions about MPNs and to facilitate resolution of resolve MPN problems.”

**Section 9767.12(d)(3) - How to review, receive or access the MPN provider directory.** ~~Nothing precludes a~~**An employer or insurer from shall initially provide**ing covered employees seeking a physician with a regional area listing of MPN providers in addition to maintaining and making available its complete provider listing in writing. If the provider directory is also accessible on a website, the URL address shall be listed with any additional information needed to access the directory online. The online provider listing shall be regularly updated to ensure the listing is accurate;

**Comment** – If the covered employee doesn’t inform the employer or insurer that he or she is seeking a physician, how will the employer or insurer know that a regional area listing is required? A regional area listing should be provided upon request.

**Recommendation:** “~~Nothing precludes a~~**An employer or insurer from shall initially** provideing covered employees seek requesting a physician with a regional area listing of MPN providers in addition to maintaining and making available its complete provider listing in writing.”

**Section 9767.12(d)( 143) A description of the standards for continuity of care policy and a notification that a copy of the policy shall be provided to an employee upon request.**

**Comment** – In the Continuity of Care Policy under CCR section 9767.10 there is no listing or description of the standards for the continuity of care policy. It is unclear what the DWC is requesting or requiring by adding the term “standard for”. State Fund recommends that the proposed language be removed or additional information be provided to clarify what “standards for continuity of care policy” means.

## **Section 9880. Written Notice to New Employees**

**Section 9880 (c)(14) A description about Medical Provider Networks (“MPN”) which includes what an MPN is, how to request information about using an MPN, the predesignation exemption from the MPN, when an employee must begin to use a physician from the MPN, and how to get more information about the MPN. The MPN Contact telephone number, MPN website URL and the periods of MPN coverage for the most recent two MPNs used by the employer shall also be stated.**

**Comment** – It is unclear why listing the periods of MPN coverage for the most recent two MPNs used by an employer is necessary for the New Employee notice. If a new employee was to experience a work injury on the first day of work the employee would be covered by the employer’s current workers’ compensation carrier at the time of injury and any MPN established by the employer.

The term “employer” in section 9880(a) refers to all employers, insured and self-insured. Requiring “insured employers” to provide periods of MPN coverage for the two most recent two MPNs used by the employer will hinder if not prevent the use of pre-printed MPN Applicant materials. If pre-printed materials cannot be easily used, the cost of customizing these documents could become cost prohibitive. Additionally, this requirement will transfer the burden of accurately providing the required information on the “insured employer.” Inaccurate information could result in the MPN not applying to the “insured employer’s” covered employees.

Furthermore, the DWC needs to clarify what is meant by “**the periods of MPN coverage for the most recent two MPNs used by the employer.**” If the employee’s notice is at the time of an MPN’s implementation, will the notice provide the name of the past two MPNs used or only the name of the new current MPN and the previous one? Is it practical to list the prior periods of a former MPN coverage if it was five, ten or twenty years ago? State Fund recommends that this language be removed from the section.

**Recommendation:** (14) A description about Medical Provider Networks (“MPN”) which includes what an MPN is, how to request information about using an MPN, the predesignation exemption from the MPN, when an employee must begin to use a physician from the MPN, and how to get more information about the MPN. The MPN Contact telephone number, **and** MPN website URL ~~and the periods of MPN coverage for the most recent two MPNs used by the employer~~ shall also be stated.

## **Section 9881. Posting of Notice to Employees**

**Section 9881(c)(13) A description about Medical Provider Networks (“MPN”) which includes what an MPN is, how to request information about using an MPN, the predesignation exemption from the MPN, when an employee must begin to use a physician from the MPN, and how to get more information about the MPN. The MPN Contact telephone number, MPN website URL and the periods of MPN coverage for the most recent two MPNs used by the employer shall also be stated.**

**Comment-** Please see comments and recommendations to Section 9767.12(d). Updating, reproducing, and distributing these materials to employers is a labor intensive and costly process. With any new legislation or other regulations passed annually, each of these notices will have to be revised, reproduced and re-distributed to employers and employees. Expanding the number of posting notices required by the employer does not appear to have significant enough benefits to the system.

We thank the Division for the opportunity to provide feedback and we offer our ongoing support in the development of these regulations.

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Todd McFarren  
President  
California Applicants' Attorneys Association (CAAA)

February 4, 2009

These comments are on behalf of the California Applicants' Attorneys Association concerning the draft Medical Provider Network (MPN) regulations currently on the DWC Forum.

For most injured workers, the receipt of prompt and appropriate medical treatment is the most important benefit provided under the workers' compensation system. And, in fact, it is equally important to the employer that prompt and appropriate treatment be provided in order to facilitate early return to work, thereby minimizing costs and the other problems that arise when valued employees are off work.

However, for almost all injured workers, the workers' compensation system is a confusing morass of unfamiliar rules and requirements. Thus, one of the keys to getting timely and appropriate medical treatment is to make certain workers have full, clear and understandable information about how to get treatment and which physicians he or she can use.

The amendments included in the draft MPN regulations revise two sections that define notice requirements. Although we agree that regulations should not impose unnecessary requirements and costs on employers and insurers, it must be recognized that in far too many cases today workers are not receiving the information they need to understand their rights and responsibilities within an MPN. Consequently, although we support a few of the proposed amendments, as a general rule we believe that these regulations need to be strengthened rather than weakened.

One of the changes we support is the requirement to regularly update an online provider listing and to make certain injured workers have the information needed to access that directory. In fact, we urge the Division to consider adding a requirement that every MPN must provide access to its physician directory through a website. Although it is true that not all injured workers will have access to a website, one of the recurring problems facing workers is the constant churning of providers within an MPN. Because most directories are constantly changing, often even the claim adjuster doesn't know which physicians are in the MPN, and access to a current list on a website is the only way to find an eligible provider.

In addition, it should be specified that workers can freely access the website without a password or other entrance requirement. We recognize that one of the proposed changes will require that the MPN provide "any additional information needed to access the directory online." However, we don't understand why there is any need for a password, and in fact many MPNs that now have an online provider listing do not require a password to enter their site. In order to make this universal, we recommend that the regulations include a requirement that an employee be able to freely access the website without a password.

There are a number of changes that we oppose. One major objection is a change to multiple sections that revises the requirement that notices be provided in English and Spanish to instead be provided in *English or Spanish, whichever is more appropriate for the employee*. This change presupposes that the insurer or employer *knows which language is more appropriate for the employee*. Frankly, it is inconceivable that an insurance company that offers an MPN is going to know which language is more appropriate for each employee of the insured employer. And, in fact, it is unlikely that a self-insured employer with an MPN is going to know which language is most appropriate for each and every employee. Furthermore, in view of the fact that the primary language of many workers in California is neither English nor Spanish, the proposal actually presents insurers and employers with a Hobson's choice because for these workers, neither English nor Spanish is "more appropriate." Finally, we believe a requirement that notices be provided in both English and Spanish is consistent with the mandate of Labor Code §3550 which requires the notice of workers' compensation rights and responsibilities to be "posted in both English and Spanish where there are Spanish-speaking employees."

We also believe the term "MPN coverage" is vague and should be amended. The word "coverage" makes an MPN sound like an insurance plan. This term is used in multiple places in the draft regulation changes, and we recommend that the Division rewrite those sections to eliminate this confusing term.

Other comments on specific sections follow:

#### §9767.12

Subdivision (a). We oppose the change to allow notice to be provided "at least 14 days" prior to termination of an MPN, and recommend that the current requirement of 30 days be retained. Because of problems in getting current information regarding member physicians, we believe 14 days is simply too short a period for the worker to make appropriate arrangements to continue treatment. Furthermore, where a worker wants to complete treatment from a terminated provider as authorized under §9767.10, it will generally take more than 14 days to complete the requirements of that section (request by employee, determination of employee's condition by employer or insurer, notification of employee and primary treating physician of determination, agreement of terminated provider to continue, report by treating physician of employee's condition).

As noted earlier, we also recommend that the reference to the website be amended to make it mandatory that the MPN maintain a website and allow access to the provider directory through that website.

Subdivision (b). The language proposed in this subdivision does not accurately set out the worker's rights. First, if a worker predesignates a physician, that worker is not required to obtain treatment from an MPN physician. Although we recognize that the definition of a "covered employee" excludes employees who have predesignated a physician, we believe that as a practical matter in most cases MPNs are going to send this notice to all employees. Therefore, to make certain workers understand their rights, we recommend that a new introductory clause be

added to this notice, as follows: "According to our records you have not predesignated a physician, and accordingly ...."

Also, as noted earlier, where a worker notifies the employer that he or she wants to complete treatment from a terminated provider as authorized under §9767.10, that worker is not required to obtain treatment from a provider in the new MPN. The notice language should be revised to include notification of this right.

Subdivision (c). For the reasons noted above, we recommend that the notice be provided at least 30 days prior to the date coverage will begin under an MPN. In addition, we strongly recommend that the Division consider adding a requirement that the employer or insurer must obtain an acknowledgment by the worker of receipt of this notice. Under the current regulations, there is no way to verify that the employer or insurer has complied with the notice requirements. As a result there is frequent litigation over this issue. Adopting a requirement that the MPN maintain a record that verifies proof of receipt of the notice would help reduce unnecessary delays of treatment and eliminate unnecessary costs. Finally, we have some concerns over the language that allows this notice to be "included on ... an employee's paystub, paycheck...." It is difficult to envision how the necessary information could be provided "on" a paystub or paycheck.

Subdivision (d). Proposed language in this subdivision requires that employees be notified of their MPN rights "at the time of injury, at the time of hire, or when an employee transfers into the MPN." We recommend that the "or" in this sentence be changed to "and." Each of these specific times presents a different need for information. When a worker is injured, he or she needs information about how to receive treatment and how to access the physician directory, as well as information about the right to select a different physician within the MPN after the first visit. At the time of hire the worker needs to understand his or her right to predesignate a physician as an alternative to using a physician in the MPN. At the time a worker is transferred into an MPN the worker needs to have information about the MPN's continuity of care rules. Thus, providing notice to the worker at only one of these occasions will mean the worker will not have access to the necessary information when he or she needs it. Furthermore, we believe providing this notice to workers at the time of hire conforms to the proposed amendment of §9880 which mandates that the Written Notice to New Employees must contain information about MPNs.

In addition, we recommend that an additional requirement be added to the notice. In order to make certain that workers fully understand their rights under the MPN statutes, we recommend that the notice include either a copy of the MPN regulations or a summary of the provisions of these regulations. Although many of the requirements set forth in these regulations are covered by the specific listings under subdivision (d), in order to fully exercise their rights workers must be given complete information regarding the duties and responsibilities of all parties under the MPN regulations.

§9767.16

Subdivision (a). We recommend that this subdivision be amended to add a specific provision defining when a written notice of termination or cessation of an MPN must be provided. In

conformance with our recommendation regarding other notices, we recommend that the worker must be given notice of termination or cessation at least 30 days prior to the effective date.

In addition, subdivision (b) of this section applies to a situation where an insurer or employer is changing MPN coverage to a different MPN. This implies that subdivision (a) applies only where there is a termination or cessation of MPN coverage and there will be no replacement MPN. If this is correct, we recommend that it be specifically stated in subdivision (a).

Paragraph (a)(1). This paragraph sets out information to be provided in the notice. Under subparagraph (B), the MPN must inform the employee "whether MPN coverage will continue under the MPN for claims arising before the effective date of the MPN's termination or cessation of use." We do not believe there is any authority for the insurer or employer to require the employee to continue to treat through a terminated MPN. However, under the required continuity of care policy of the MPN the worker may request completion of treatment from his or her treating physician in the terminated MPN. We recommend that subparagraph (B) be amended to include information on the worker's right to have continuity of care, and delete any improper inference that the insurer or employer may continue to mandate use of a terminated MPN.

Under subparagraph (C), we object to the deletion of "address." Some injured workers may not have access to the internet, and may not feel comfortable enough in English or Spanish to navigate the voice-mail system maintained by most MPNs. These workers should be given the opportunity to access information in writing, and they need the MPN address.

Under subparagraph (D), it is incomplete to merely tell the worker that he or she has certain rights "for periods of no MPN coverage." As noted earlier, we believe the word "coverage" is vague; here we suggest "for periods where no MPN is established." In any case, workers will not know when there is no MPN coverage, or when no MPN is established. We recommend that this subparagraph be amended to specifically notify the worker when there is a period during which no MPN is in effect. In addition, when there is no MPN the worker should also be informed of his or her right to request a change of physician during the first 30 days following the injury pursuant to Labor Code §4601.

Paragraph (a)(2). The proposed language of this paragraph is confusing and needs to be completely rewritten. One change, in conformance with the recommendation above, would change the first sentence of the proposed language to "The <Insert MPN Name> Medical Provider Network (MPN) will no longer be in effect as of ...." The next sentence should be revised in a manner similar to our recommendation regarding paragraph (1)(B) above to describe the worker's rights regarding continuity of care.

Paragraph (a)(3). See comments above regarding providing notice "on a paystub or paycheck."

Subdivision (b). This subdivision starts out, "If an MPN applicant or insured employer...." When the MPN regulations were first adopted we objected to the use of the term "MPN Applicant" where the MPN is approved and in use. We believe the use of the word "Applicant" unnecessarily confuses the meaning of many of these provisions. Therefore, we again recommend that the Division drop this term. However, recognizing that the Division has already



rejected that recommendation, we also point out that the term "MPN applicant or insured employer" is redundant since under §9767.1 an "MPN Applicant" is defined as "an insurer or employer...."

Paragraph (b)(3). As noted earlier we recommend that workers be given either a copy of these regulations or a summary of the provisions of the regulations. This sentence should be amended to include the ending phrase "pursuant to 8 California Code of Regulations §9767.10."

§9880. This section is proposed to be amended to include information regarding MPNs in the Written Notice to New Employees. We recommend that in addition this notice be required to include the statutory language set forth in Labor Code §4060 advising the worker of his or her right to consult an information and assistance officer or an attorney.

Notice to Employees – DWC Form 7.

The definition of Temporary Disability Benefits has been amended to provide that for injuries on or after 1/1/08 these benefits may not extend for more than 104 weeks. This is inaccurate since Labor Code §4656 provides a number of exceptions to the 104 week cap.

Under the heading, "Report Your Injury," the form has been amended to delete the name and phone number of an employer representative should the employee's supervisor not be available. We see no reason to delete this information. There are numerous circumstances when the employee's immediate supervisor is not available, and there should be some alternative provided for the employee to notify the employer of the injury.

Finally, we believe it is premature to delete all references to vocational rehabilitation benefits from this form.

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California Workers' Compensation Institute (CWCI)

February 4, 2009

These comments on the draft regulations to modify the DWC-7 Posting Notice and MPN notices are presented on behalf of the California Workers' Compensation Institute members. Recommended modifications are indicated by highlighted underline and ~~strikethrough~~.

In the past year in various meetings with stakeholders and the regulated community, the rationale for delivering the MPN notices efficiently and effectively has been discussed with the Administrative Director (AD). AD Nevans recommended streamlining the MPN notice regulations by allowing these notices to be posted in order to eliminate the need to send a separate notification to every individual covered employee. In these proposed changes however, instead of substituting notice by posting, the Administrative Director appears to be adding a

posting requirement in addition to the existing individual delivery requirement, and an additional notice. The Institute recommends that the individual separate notification be eliminated.

The Institute recommends making changes to the MPN regulations that will eliminate or reduce the MPN coverage gaps that unnecessarily disrupt injured workers' medical care and raise administrative costs. This can be accomplished by removing the 14-day advance notice requirement for MPN notices and by permitting notice of MPN changes and other MPN information by posting.

The Administrative Director has included in the MPN notice regulations, language that may be used in notifications for initial implementation, termination, cessation of use and change of MPN coverage. This is very helpful to the regulated community and the Institute recommends that the Administrative Director also add to the regulations language that can be used in a complete, written MPN employee notification.

Because MPN applicants will need time to program changes, change workflow, institute operational changes, and to educate staff and insured employers, the Institute recommends making the changes effective a minimum of 90 days after the date the changes are adopted.

## **MPN Employee Notification**

### **Section 9767.12(a)**

#### **Recommendation**

- a) An employer or insurer that offers a Medical Provider Network Plan under this article shall notify every covered employee in writing about the use of the Medical Provider Network ~~at least 14 days~~ prior to the initial implementation of an approved MPN. The MPN implementation notice shall be written in English or Spanish, whichever is more appropriate for the employee. The initial written MPN implementation notice to all covered employees shall at a minimum, include the following information:
  - 1) That medical treatment for new work injuries will be provided through medical providers in the <Insert MPN Name> Medical Provider Network;
  - 2) The effective date of coverage under the new MPN;
  - 3) That existing work injuries may be covered under the new MPN, unless the MPN implementation results from a change in insurers;
  - 4) A telephone number for the MPN Contact and an MPN website, if applicable, to obtain more information about using the MPN.

## **Discussion**

While reducing advance notification of implementation or a change in MPNs from 30 days to 14 days is an improvement, removing the minimum notification requirement will eliminate gaps between MPNs that will otherwise occur when employers switch insurers. The gaps in coverage can be eliminated or reduced by facilitating timely notice to covered employees. This can be accomplished by permitting written notice by posting and by removing the minimum advance notice requirement. When employers switch to different insurers, binding coverage is rarely completed in time to provide 14 days of advanced written notice to covered employees before

policy start dates. An insurer does not have direct access to contact information for covered employees, and must therefore work with the insured employer, to ensure covered employees are notified of MPN implementation. Gaps in MPN implementation result in disruptions in treatment for injured employees as they are moved from one physician to another and in the additional administrative costs and delays caused by the complex transfer-in process.

Qualifying “implementation” with “initial” will help clarify that this notice is required only the first time an MPN is rolled out. Alternatively, the MPN implementation notice can be merged with the MPN change notice, as implementation can be treated as a change. If an MPN implementation results from a change in insurers, existing work injuries cannot be covered under a new MPN as the responsibility for the existing injury remains with the previous carrier. If this clarification is not added, there may be disputes over the interpretation of this new language that some may interpret to allow the shifting of risk.

#### **Section 9767.12(b)**

##### **Recommendation**

- b) The following language may be used for the initial written MPN implementation notice provided to covered employees: “As of <Insert Effective Date>, you must obtain treatment for ~~your~~ **new** work injuries from physicians in the <Insert MPN Name> Medical Provider Network (MPN). You may also be required to use MPN physicians for your existing work injuries. Please contact your supervisor or the MPN Contact at <Insert MPN Contact number and MPN website if applicable> to obtain more information about how to get medical treatment through the MPN.”

#### **Discussion**

The language should be changed to clarify that covered employees must use MPN physicians for new injuries. They may not be required to use the MPN physicians for existing injuries.

#### **Section 9767.12(c)**

##### **Recommendation**

- c) The MPN implementation notice shall be provided to covered employees ~~at least 14 days~~ prior to the date coverage will begin under the MPN. The initial MPN notification information may be posted in close proximity to the workers’ compensation posting required under Section 9881, provided by mail, ~~or~~ included on or with an employee’s paystub, or paycheck, or distributed through electronic means, including email, if the covered employee has regular electronic access to email at work to receive this notice ~~at least 14 days prior to the implementation of the MPN. If the employee cannot receive this notice electronically at work within the required time frame, then the supervisor shall provide this information to the employee in writing at least 14 days prior to the implementation of the MPN.~~

#### **Discussion**

See Section 9767.12(a) discussion on deleting the 14 days minimum advance notice requirement.

Posting the MPN implementation notice offers a faster, more efficient and effective method of notice implementation for covered employees. See discussion in Section 9767.12(a).

The last sentence is unnecessary and duplicative of information in the previous sentence.

## **Section 9767.12(d)**

### **Recommendation**

- d) In addition, separate from the initial MPN implementation notice, a complete written MPN employee notification with the following information about coverage under the MPN being implemented shall be provided to covered employees. Before MPN coverage is implemented, the complete written MPN employee notification shall be posted in a conspicuous location frequented by employees during the hours of the workday and in close proximity to the workers' compensation posting required under Section 9881. This notification ~~shall~~ may also be provided to a covered employee at or prior to the time of injury, at the time of hire, or ~~when~~ at or prior to the time an employee transfers into the MPN. The notification shall be provided to a covered employee upon request. ~~This MPN notification shall be provided to employees in English or Spanish, whichever is more appropriate for the covered employee. Before MPN coverage is implemented, the complete written MPN employee notification shall also be posted in both English and Spanish in a conspicuous location frequented by employees during the hours of the workday and in close proximity to the workers' compensation posting required under Section 9881.~~ The complete written MPN employee notification shall include the following information:

....

(3) How to review, receive or access the MPN provider directory. An employer or insurer shall provide covered employees seeking a physician ~~with~~ a regional area listing of MPN providers ~~and in addition to maintaining and making available~~ make its complete provider listing accessible at the workplace in writing. If the provider directory is also accessible on a website, the URL address shall be listed with any additional information needed to access the directory online. The online provider listing shall be regularly updated to ensure the listing is accurate;

....

(7) How to choose a physician ~~and change physicians~~ within the MPN;

### **Discussion**

The current posting notice (section 9880 and 9880.1) includes advising the injured worker regarding the kinds of injuries covered by workers' compensation, how to obtain emergency medical care, the right to receive medical care, the process for obtaining treatment, the employee's right to receive benefits for temporary disability, permanent disability, supplemental job displacement, and death, and the employee's protections against discrimination. The process for obtaining medical care through the MPN is part and parcel of the employee's right to receive prompt treatment and no more important than the rights enumerated in section 9880. As for general workers' compensation rights and processes, posting MPN employee notifications is a reasonable, efficient and effective means of informing the employee of MPN rights and

processes. An additional notice in English or Spanish, whichever is more appropriate for the covered employee, can be provided to an employee upon request.

It is sufficient to provide access to the complete listing at the work site. It is not necessary to provide a hard copy of the complete listing which is often hundreds of pages long.

“And change physicians is duplicative since section 9712(d)(9) is “How to change physicians within the MPN.”

#### **Section 9767.16(a)(1)**

##### **Recommendation**

(1) The MPN Applicant of the MPN that is being terminated or will cease to be used ~~shall provide~~ is responsible for ensuring that every covered employee is provided with the following information prior to the termination or cessation of use of the MPN by an MPN Applicant or insured employer:

##### **Discussion**

If the MPN applicant is an insurer, it may not be possible for the terminating or ceasing MPN applicant to provide notice to every covered employee. An insurer does not have direct access to the work place or to the current contact information for covered employees, and must work with the insured employer, and/or the new MPN applicant, to ensure covered employees are notified of the termination or cessation of use.

#### **Section 9767.16(a)(2)**

##### **Recommendation**

(2) The following language may be provided in writing to covered employees to give the required notice of termination or cessation of use of an MPN: “The <Insert MPN Name> Medical Provider Network (MPN) will no longer be effective as of <Insert Date of MPN Termination or Cessation of Use>. You shall/shall not <Select Whichever is Appropriate> continue to use this MPN for work injuries occurring before this date while the MPN was in effect. Any pending Independent Medical Reviews will end with the MPN coverage. For new injuries occurring after the date MPN coverage ends, in the event there is a period of no MPN coverage you have the right to choose your physician 30 days after you notified your employer of your injury. Please contact <Insert MPN Contact Name and Number and MPN Website If Applicable>, if you have any questions.”

##### **Discussion**

It is important to clarify that a covered employee has the right to choose a physician after 30 days only in the event there is a period of no MPN coverage.

#### **Section 9767.16(a)(3)**

##### **Recommendation**

(3) The notice of MPN termination or cessation of use may be posted in close proximity to the employee notification required by Section 9881.12, provided by mail or included on or with an employee’s paystub, paycheck or distributed through electronic means,

including email, if the covered employee has regular electronic access to email at work to receive this notice prior to the end of MPN coverage. ~~If the employee cannot receive this notice electronically at work within the required time frame, then the supervisor shall provide this information to the employee in writing prior to the end of MPN coverage.~~

### **Discussion**

As with the notice of MPN implementation, posting the notice of MPN termination or cessation of use offers a faster, more efficient and effective method of notice implementation for covered employees. See discussion in Section 9767.12(a).

### **Section 9767.16(b)**

#### **Recommendation**

(b) If an MPN Applicant or insured employer is changing MPN coverage to a different MPN, the MPN Applicant that is providing the new MPN coverage is responsible for ensuring that every covered employee is given written notice of the following information ~~at least 14 days~~ prior to the effective date of coverage under the new MPN:

### **Discussion**

See Section 9767.12(a) discussion on deleting the 14-day minimum advance notice requirement.

### **Section 9767.16(e)**

#### **Recommendation**

(e) The notice of a change of MPN coverage may be posted in close proximity to the employee notification required by Section 9881.12, provided by mail, ~~or~~ included on or with an employee's paystub, or paycheck, or distributed through electronic means, including email, if the covered employee has regular electronic access to email at work to receive this notice ~~at least 14 days~~ prior to the beginning of new MPN coverage. ~~If the employee cannot receive this notice electronically at work within the required time frame, then the supervisor shall provide this information to the employee in writing at least 14 days prior to the beginning of new MPN coverage.~~

### **Discussion**

Posting the MPN implementation notice offers a faster, more efficient and effective method of notice implementation for covered employees. See discussion in Section 9767.12(a).

See Section 9767.12(a) discussion on deleting the 14 days minimum advance notice requirement. The last sentence is unnecessary and duplicative of information in the previous sentence.

### **Section 9767.16(f)**

#### **Recommendation**

(f) The following information, including two most recent periods of MPN coverage shall be stated ~~on the Notice to Employees Poster (DWC Form 7) required by section 9881~~ in the introduction to the complete written MPN employee notification:

**Medical Provider Networks.** Your employer is using an MPN to provide you with treatment. An MPN is a network of health care providers that may be used by your employer to treat workers injured on the job. You can request a copy of this notice by

calling the MPN number below. **If you have predesignated a personal physician prior to your work injury, then your injury will not be covered under the MPN.** If you have not predesignated and your employer is using an MPN, after the first medical visit you are free to chose an appropriate provider from the MPN list. If you are treating with a non-MPN doctor for an existing injury, you may be required to change to a doctor within the MPN. To see if you are covered under an MPN and to find out how to use it, call the number below or go to the website:

Current MPN's toll free number:	MPN website:	Coverage Period
Prior MPN's toll free number:	MPNwebsite:	Coverage Period

MPN Contact information shall also be provided ~~on the poster~~ in the complete written MPN employee notification for more information about MPN coverage. ~~The MPN employee notification(s) posted near the Notice to Employees poster shall be the complete MPN employee notification(s) of the current MPN(s) being used.~~

## **Discussion**

The Institute recommends placing this language in the introduction to the complete written MPN information notice that is posted if an MPN has been employed, instead of in the Notice to Employees Poster (DWC Form 7), because if there is no MPN, this language is unnecessary, irrelevant and confusing. If there is an MPN, the language will be in the MPN notice where it logically belongs. Moving the language to the MPN information notice will also mean that claims administrators and insured employers need not make revisions to their DWC-7 posting notices and new hire pamphlets each time an MPN has a change in MPN information such as MPN contact, change in URL, etc. Such changes are costly and time consuming.

## **Section 9767.16(g)**

### **Recommendation**

(g) If a change in MPN coverage results in modifications to an MPN's plan application or results in the filing of a new MPN application, the MPN modification or new application filing shall be submitted to DWC pursuant to section 9767.8 or 9767.3, whichever is applicable. Distribution to covered employees of the ~~14-day~~ notice of a change of MPNs shall occur after DWC's approval of an MPN modification or new MPN.

## **Discussion**

See Section 9767.12(a) discussion on deleting the 14 days minimum advance notice requirement.

## **Written Notice to New Employees**

## **Section 9880(c)**

### **Recommendation**

~~(14) A description about Medical Provider Networks ("MPN") which includes what an MPN is, how to request information about using an MPN, the predesignation exemption from the MPN, when an employee must begin to use a physician from the MPN, and how to get more information about the MPN. The MPN Contact telephone number, MPN~~

~~website URL and the periods of MPN coverage for the most recent two MPNs used by the employer shall also be stated.~~

### **Discussion**

The Institute recommends placing this language in the MPN information notice that must be posted if an MPN has been employed, instead of in the Notice to Employees Poster (DWC Form 7), because if no MPN is utilized this language is unnecessary, irrelevant and confusing. If an MPN has been employed, the language will be in the MPN notice where it logically belongs. Moving the language to the MPN information notice will also mean that claims administrators and insured employers need not make revisions to their DWC-7 posting notices and new hire pamphlets each time an MPN has a change in MPN information such as MPN contact, change in URL, etc. Such changes are costly and time consuming.

### **Section 9881(b)**

#### **Recommendation**

~~(13) A description about Medical Provider Networks ("MPN") which includes what an MPN is, how to request information about using an MPN, the predesignation exemption from the MPN, when an employee must begin to use a physician from the MPN, and how to get more information about the MPN. The MPN Contact telephone number, MPN website URL and the periods of MPN coverage for the most recent two MPNs used by the employer shall also be stated.~~

### **Discussion**

The Institute recommends placing this language in the MPN information notice that must be posted if an MPN has been employed, instead of in the Notice to Employees Poster (DWC Form 7), because if no MPN is utilized this language is unnecessary, irrelevant and confusing. If an MPN has been employed, the language will be in the MPN notice where it logically belongs. Moving the language to the MPN information notice will also mean that claims administrators and insured employers need not make revisions to their DWC-7 posting notices and new hire pamphlets each time an MPN has a change in MPN information such as MPN contact, change in URL, etc. Such changes are costly and time consuming.

### **Section 9881.1**

#### **Recommendation**

See the recommended changes to the draft Notice to Employees Poster (DWC Form 7) that is attached to this document[**Note: A copy of this poster is available upon request. Please email Maureen Gray at [mgray@dir.ca.gov](mailto:mgray@dir.ca.gov) if you would like to view this document.**]

### **Discussion**

Most proposed changes are recommended for clarity, and readability. For other changes recommended in the poster, explanations follow.

### **Section 9881.1 -- Benefits**

#### **Recommendation**

**Benefits.** Workers' compensation benefits include:



- **Medical Care:** Doctor visits, hospital services, physical therapy, lab tests, x-rays, and medicines that are reasonably necessary to treat your injury. You should never see a bill. There is a limit on some medical services.
- **Temporary Disability (TD) Benefits:** Payments if you lose wages while recovering. For most injuries ~~on or after 1/1/08~~, TD benefits may not ~~extend~~ be paid for more than 104 weeks within five years from the date of injury.
- **Permanent Disability (PD) Benefits:** Payments if your injury causes a permanent disability.
- **Supplemental Job Displacement Benefit:** A nontransferable voucher payable to a state approved school if ~~you are injured on or after 1/1/04, the~~ your injury results in a permanent disability, you don't return which prevents you from returning to work within 60 days after TD ends, and your employer does not offer you modified or alternative work.
- **Death Benefits:** Paid to dependents of a worker who dies from a work-related injury or illness.

### Discussion

Because the poster is intended to inform employees about work injuries going forward, it is not necessary to address dates of injuries in the past. Also, noting that the 2-year TD cap exists for “most” injuries covers the exceptions that exist for multiple injuries, the injuries and conditions noted in Labor Code section 4656(c)(3); as well as pre-2004 injuries, without getting into unnecessary detail.

The recommended wording clarifies that a voucher is payable when the permanent disability prevents an employee from returning to work, and not when an employee chooses not to return to work for another reason.

### Section 9881.1 -- Naming Your Own Physician Before Injury or Illness (Predesignation) Recommendation

**Naming Your Own Physician Before Injury or Illness (Predesignation).** You may be able to choose the doctor who will treat you for a job injury or ~~illness during the first 30 days after the injury~~. If eligible, you must tell your employer, in writing, the name and address of your personal physician or medical group *before* you are injured and your physician must have agreed to treat you for ~~your work injury~~ injuries or illnesses. For instructions, see your employer for a current copy of the written information about workers' compensation that your employer is required to give to for new employees.

### Discussion

Treatment by a predesignated physician is not limited to the first 30 days after the injury. The employee is best directed to the most current copy of the new hire pamphlet because the version provided at time of hire may well be outdated and include information that is no longer accurate.

### Section 9881.1 -- If You Get Hurt

#### Recommendation

#### If You Get Hurt:

**1. Get Medical Care.** ~~If you need first aid, contact your employer.~~ If you need emergency care, call 911 immediately; if you need first aid, contact your employer; otherwise get medical care from the doctor/medical group listed below. ~~Or one of the numbers below for help immediately.~~

Fire Dept. \_\_\_\_\_ Police \_\_\_\_\_  
Doctor/Medical Group \_\_\_\_\_ Hospital Tel \_\_\_\_\_ Address \_\_\_\_\_  
\_\_\_\_\_

**2. Report Your Injury.** Report ~~the all~~ injury work injuries and illnesses immediately to your supervisor.

Don't delay. There are time limits. If you wait too long, you may lose your right to benefits. Your employer is required to provide you a claim form within one working day after learning about your injury. Within one working day after ~~an employee~~ you file a claim form, ~~the your~~ employer shall authorize the provision of all treatment, consistent with the applicable treating guidelines, for the alleged injury and shall ~~continue to provide~~ be liable for up to \$10,000 in treatment until the date that liability for the claim is accepted or rejected. ~~Until the date the claim is accepted or rejected, liability for medical treatment shall be limited to ten thousand dollars (\$10,000).~~

**3. See Your Primary Treating Physician (PTP).** This is the doctor with overall responsibility for treating your injury or illness. If you predesignated by naming your personal physician or medical group before injury (see above), you may see him or her for treatment in certain circumstances. Otherwise, your employer has the right to select the physician who will treat you for the first 30 days. You may be able to switch to a doctor of your choice after 30 days. Different Special rules apply if your employer offers a Health Care Organization (HCO) or has a Medical Provider Network (MPN). If your employer has an MPN, see the MPN notice posted nearby.

**Medical Provider Networks.** Your employer may be using an MPN to provide you with treatment. ~~An MPN is a network of health care providers that may be used by your employer to treat workers injured on the job. If your employer is using an MPN, there should be an MPN notice posted next to this poster to explain how to use the MPN. You can request a copy of this notice by calling the MPN number below. If you have predesignated a personal physician prior to your work injury, then your injury will not be covered under the MPN.~~ If you have not predesignated and your employer is using an MPN, after the first medical visit you are free to chose an appropriate provider from the MPN list. If you are treating with a non-MPN doctor for an existing injury, you may be required to change to a doctor within the MPN. To see if you are covered under an MPN and to find out how to use it, call the number below or go to the website:

Current MPN's toll free number: \_\_\_\_\_ MPN  
website: \_\_\_\_\_ Coverage Period \_\_\_\_\_  
Prior MPN's toll free number: \_\_\_\_\_ MPN  
website: \_\_\_\_\_ Coverage Period \_\_\_\_\_

## **Discussion**

Directions for emergency medical care should appear before directions for first aid. Direction to other care is also necessary. Because the 911 telephone number is the number to call for all emergencies including fire department, police, hospital and ambulance, posting a single number for emergency care is appropriate.

The MPN description section is unnecessary for this poster and should be appear instead in the MPN notice that must be posted if an MPN is employed. If this language is added to the Notice to Employees Poster (DWC Form 7) and an MPN has not been employed, it will only serve to confuse covered employees. Adding “If your employer has an MPN, see the MPN notice posted nearby” instead of the MPN description will appropriately direct affected employees to the necessary information. Moving the language to the MPN information notice will also mean that claims administrators and insured employers need not make revisions to their DWC-7 posting notices and new hire pamphlets each time an MPN has a change in MPN information such as MPN contact, change in URL, etc. Such changes are costly and time consuming.

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Steven Suchil  
Assistant Vice President  
American Insurance Association

February 4, 2009

These comments on the Division of Workers’ Compensation (DWC) proposed revisions to the MPN Notice Regulations and Employee Poster are submitted on behalf of the members of the American Insurance Association (AIA).

AIA is a national trade association representing over 350 major property and casualty insurers that write insurance in every jurisdiction in the United States. U.S. premiums for AIA member companies exceed \$123 billion annually. AIA member companies offer all types of property and casualty insurance, including personal and commercial motor vehicle insurance, commercial property and liability coverage, workers’ compensation, homeowners’ insurance, medical malpractice coverage and product liability insurance. AIA companies, for personal and commercial lines of business, in California write nearly \$18 billion in premiums, comprising more than 29 percent of the insurance market. AIA member companies account for over 25 percent of the workers’ compensation premiums in California.

We appreciate the DWC efforts toward simplifying the various notices and processes involved with the MPN system. While we commend the Division for the majority of the revisions, we have a few comments for your consideration.

We are concerned about compliance with Labor Code section 3551, which requires the New Hire pamphlet to include information found on the Notice to Employees Poster. When these proposed revisions complete the rule-making process, the New Hire pamphlet will no longer comply with

the Notice to Employees Poster. It would seem that both of these documents need to be revised in tandem. We also note that these changes may also require changes to the DWC-1.

We strongly recommend that all of these documents be reviewed and necessary changes be made together so that confusion and inconsistency are reduced. We also ask that when these changes are completed the effective date will be consistent with January renewals. Supplying California employers with these new materials will be expensive, especially if the 5-part OCR DWC-1 is involved.

Under Title 8 C.C.R. 9767.16(f), MPN employee notifications must be posted near the Notice to Employer Poster. The Notice to Employer Poster, however, states that these items must be next to each other. We believe the same work should be used in both documents and believe near is preferable in that physical limitations may sometime come into play.

We are suggesting a number of changes to the Notice to Employees Poster. **[Note: A copy of this poster is available upon request. Please email Maureen Gray at [mgray@dir.ca.gov](mailto:mgray@dir.ca.gov) if you would like to view this document.]**

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Lori Kammerer

February 3, 2009

On behalf of my client, MEDEX Healthcare, Inc., thank you for considering our comments pertaining to the proposed update of the employees' poster and MPN notice regulations.

We support the revisions that include the 14-day provision (rather than 30), the decrease in information contained within the original implementation notification, the clarification of the acceptability to attached to paystubs, etc., the continued requirement that full notices are given at the time of injury and to new hires or transfers, and the creation of the MPN posting.

However, some employers who have enrolled their employees into an HCO also have an approved MPN, which is only minimally for transfers into the MPN (for employees not eligible for the HCO). For those employers, a generic posting would be confusing to the employees.

We suggest that a statement such as "If you have been enrolled in an HCO, the following may or may not apply to you in the event you sustain a work-related injury" could be inserted prior to Section (d)(1) in the notification, or perhaps it could have its own Section in the Notification.

Other language options could be something such as the following: "If your employer contracts with an HCO, the following will apply to you only if you are transferred into the MPN under the Transfer of Care provisions".

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Charlene Phelps

February 3, 2009

The new proposed requirement to post the written MPN notification within close proximity to the worker's compensation posting required under Section 9881 would be duplicative and unnecessary for those employers who currently have an approved MPN in place. These employers have already sent a mass mailing to all covered employees prior to implementation of the MPN; have given MPN notifications to new hires and to employees at the time of injury.

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Harry Monroe

February 3, 2009

I would make two suggestions regarding these proposed regulations.

First, I would suggest that the rules clarify that changes made by existing MPN's solely for the purpose of complying with these new regulations, if adopted, will not necessitate the filing of MPN plan modifications. Requiring such would be an undue burden on existing MPN's and would result in the Division being inundated with submissions.

Second, section 9767.12(e) requires that a notice of change of MPN coverage be provided to employees. We would suggest that such notice only be required when there is a decrease in coverage requiring a filing. Increases in coverage would still require a filing with the Division in accordance with existing rules; however, an increase in coverage should not require such notice to employees, since an increase does not disadvantage employees in any way. Requiring notice of an increase in coverage creates an administrative cost not associated with any significant benefit to the injured employee.

Thank you for your consideration.

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Gale Chmidling

January 29, 2009

LC9767.12 (c) Limits other means of notice. Pay stubs, electronic notice and mailing all benefit larger employers with the means for these processes. Small business with

fewer than 10 employees or employers with limited electronic savvy are denied the ability to distribute material via interoffice mail or memo. This also applies for LC9767.16(a)(3).

LC9767.12 (d)(3) Still implies that a complete copy of the MPN provider list must be available upon asking. This list for most MPN's is thousands of pages. Consideration should be given to clarify language in this section to explain that if a regional area listing is not available, then a complete list must be provided. Attention can be given to web based lists as all providers are generally accessible.

Current MPN language suggests that an employee may choose any physician, as long as they are in the network. Allowing an employee to choose a provider from the complete list of MPN providers may be misleading as a selected medical provider must be within a reasonable geographic area, (LC4600(c)). Language should be considered to make clearer the intent of LC4600(c). Just because an MPN is in place, should not mean that an employee may travel unreasonable distances for care, unless rural access issues are present. I believe the intent of LC4600(c) was to prevent unreasonable travel – with or without an MPN in place. Current MPN language suggests that an employee may choose any physician, as long as they are in the network. The 15 & 30 mile access standards are implied towards employers and typically employees do not mind these standards.

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Eric Bryan Jones

January 28, 2009

My request on the new version of the DWC-7 form would be that the form be 8.5 x 11 instead of 8.5 x 14, for programming purposes.

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Anonymous Comment

January 22, 2009

1. The notice should be provide in more languages than just English and Spanish. Otherwise it would unfairly discriminate against other nationalities.

3. sections 7 and 9 have same info